

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2015-290-C

IN RE:)	
)	
Petition of the South Carolina Telephone)	
Coalition for a Determination that Wireless)	REPLY
Carriers are Providing Radio-Based Local)	
Exchange Services in South Carolina that)	
Compete with Local Telecommunications)	
Services Provided in the State)	
_____)	

CTIA – The Wireless Association ® (“CTIA”)¹ hereby replies to the Response of the South Carolina Telephone Coalition (“SCTC”) to CTIA’s previously filed Motion. SCTC has chosen not to address the statutory competition criteria outlined in CTIA’s Motion, but rather seeks to divert the Public Service Commission of South Carolina’s (“Commission”) attention by focusing on an inapplicable statutory provision. As set out below, the Commission should enter an order dismissing SCTC’s Petition because it fails to state a claim upon which the Commission can grant relief, and fails to provide proper and adequate notice required by S.C. Code § 58-9-280(E)(3) (“Subsection (E)(3)”)—the very statutory provision under which the Petition sought relief and that was included in the Commission’s Notice.

Alternatively, SCTC’s Response demonstrates exactly why the Commission must expand the scope of this proceeding to evaluate appropriate reductions in the size of the South Carolina

¹ CTIA appears on behalf of itself and its members Sprint, T-Mobile, TracFone, U.S. Cellular, and Verizon.

Universal Service Fund (“USF” or “the fund”) and ensure that SCTC members are using their USF funding solely to achieve the USF’s statutorily defined purpose.

Finally, the Response cites no urgent reason for SCTC’s Petition to be considered under the accelerated schedule currently set for the instant docket. Indeed, the issues raised by CTIA in its Motion warrant appropriate deliberation, and that cannot be accomplished under this docket’s accelerated schedule. Given the stakes involved – whether 4.5 million South Carolina wireless subscribers for the first time must pay USF charges – the procedural schedule in this case must allow for the development of a complete record. Accordingly, CTIA requests that the Commission suspend the case schedule pending resolution of CTIA’s Motion.

I. THE PETITION FAILS TO PLEAD FACTS SUFFICIENT TO SUPPORT RELIEF AND PROVIDE THE NOTICE REQUIRED BY SUBSECTION (E)(3).

CTIA’s Motion described the necessary requirements to show, under S.C. Code § 58-9-280(G)(1) (“Subsection (G)(1)”), the presence of competition from a radio-based local exchange service. SCTC failed to plead even the most basic facts necessary to support its claim. The Petition does not allege the presence, let alone the identity, of two or more providers; it does not define the relevant geographic area in which those unidentified providers allegedly operate; and it does not define the customer class the unidentified providers compete to serve. In short, the Petition fails to plead facts sufficient to satisfy even a single element of the test for relief under Subsection (G)(1).²

² SCTC’s testimony filed on September 29, 2015 follows the road map laid out in the Petition and fails to provide the required information on a carrier-specific basis for SCTC members. This approach fails to comply with Subsection (E)(3), which requires the Commission to make its determination with respect to a particular company that provides radio-based local exchange services and a particular local telecommunications service with which it is alleged to compete.

Furthermore, CTIA demonstrated that the Petition is also fatally deficient because by failing to satisfy the statutory criteria delineated under Subsection (G)(1), the Petition also triggers a violation of Subsection (E)(3). The latter section prohibits the Commission from requiring any company to contribute to the USF unless the Commission finds “*after notice and opportunity for hearing*” (emphasis added) that the company is “providing ... radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.” SCTC failed to identify the relevant geographic area, the relevant customer group and the alleged competitors; and without those details, no “company” can be deemed to be on notice as required by Subsection (E)(3).

Instead of addressing CTIA’s arguments, the Response (1) alleges that under Subsection (E)(2), a carrier-specific showing is not required, and (2) claims that every retail wireless carrier in South Carolina has received actual or constructive notice of this proceeding. Both points fail.

SCTC cites to S.C. Code § 58-9-280(E)(2) (“Subsection (E)(2)”) for the proposition that “South Carolina statutes do not require a company-by-company determination of whether wireless service is being provided in competition with landline services in the State.” (Response at Page 5). SCTC’s citation to Subsection (E)(2) is erroneous, because the Petition on its face asks the Commission to make a determination pursuant to Subsection (E)(3), not Subsection (E)(2). Subsection (E)(3), as this Commission has previously concluded, is the statutory provision through which providers of “private local exchange services” or “radio-based local exchange services” may be required to contribute to the USF “after notice and opportunity for hearing.” *See* Order No. 2001-419 at Page 36. Moreover, established principles of statutory construction require the use of Subsection (E)(3) (a more specific statutory provision) rather than Subsection (E)(2) where wireless carriers are concerned. *See Spectre v. SC DHEC*, 386 S.C. 357,

372, 688 S.E.2d 844, 852 (2010) (“[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.”).

The plain language of Subsection (E)(3) requires that any “company” who may pay into the USF be identified and notified. The Petition fails to do so, and therefore fails to state a claim under Subsection (E)(3). SCTC’s Response *concedes* as much:

Thus, Subsection (E)(3) provides a method to require *specific* carriers to contribute upon a showing as to that particular carrier. For example, the Commission has previously required wireless eligible telecommunications carriers (“ETCs”) to contribute to the State USF, without making the general wireless industry filing contemplated by Subsection (E)(2).

(Response at pp. 5-6). Significantly, the Notice issued in this docket specifically cites Subsection (E)(3), *and makes no mention* of Subsection (E)(2) or any other provision.³

The Petition did not request the Commission to consider Subsection (E)(2), but rather specifically sought relief under Subsection (E)(3). And because the Petition failed to plead facts sufficient to support a claim under Subsection (G)(1), SCTC’s arguments about what may constitute “actual” and “constructive” notice are ineffective. In Subsection (E)(3), the General Assembly instructed the Commission to provide notice and opportunity for a hearing, and the deficiency of the pleading rendered such notice an impossibility.

³ See Docket Id 258924, “Revised Notice of Filing and Prefile Testimony Deadlines,” in Docket No. 2015-290-C , <https://dms.psc.sc.gov/Attachments/Matter/46ca540d-a40e-448b-ae2a-0edba562a74e>

II. SCTC'S RESPONSE DEMONSTRATES THE NEED FOR LOOKING MORE CLOSELY AT THE USF

In its Motion, CTIA requested that if the Commission does not dismiss this case, it engage in a comprehensive review of the USF because current distributions are based on decades-old subsidies; current funding levels are unnecessary; and the Fund lacks transparency and accountability. SCTC attempts to wave off these points by referring back to USF proceedings from 1996-2001 and ensuing litigation, but that misses the mark. The South Carolina telecommunications market has undergone a fundamental transformation since 2001, which means that USF distributions at current levels are no longer needed to sustain universal service. The Commission therefore should review the USF program and decrease the subsidies it pays.

The purpose of the state USF as defined by the General Assembly is “continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates” S.C. Code Ann. § 58-9-280(E). SCTC's Response states that the USF “has allowed Carriers of Last Resort (“COLRs”) to provide service in high cost areas of the state that would not be served by competitive carriers” (Response at p. 8), and that “there are COLRs in South Carolina willing to provide service in high cost areas that competitive carriers would not choose to serve.” (Response at p. 9). Yet the Petition claims — and requests that the Commission rule — that wireless carriers providing retail wireless service in South Carolina are doing just that: competing with COLRs statewide, which presumably includes high-cost areas of the state. This contradiction cannot be ignored. If COLRs are “providing service in high-cost areas of the state that would not be served by competitive carriers,” then the Commission and the ORS need to identify those areas. Subsection (E)(3) and Subsection (G)(1) require such detail. Certainly no wireless carrier could be competing in any such area that a competitive carrier

“would not choose to serve.” Only an expanded proceeding could determine the true status of competition, and any continuing need for the USF.

Furthermore, the Response demonstrates that the Commission must determine (as emphasized in CTIA’s Motion to Dismiss) whether USF funds are actually being used to support “universally available basic local exchange telephone service at affordable rates.” SCTC’s Response claims otherwise. SCTC makes the claim that the USF “has also allowed the State to attract and retain industry and jobs to the State.” (Response at Page 8). The Response goes on to quote Mr. Oliver’s testimony for a more particular way in which the USF is being used to attract industry and jobs:

State USF has allowed Home Telephone, for example, to attract a large Google data center in 2008, with a \$600 million expansion announced in 2013.

(Response at p. 8). It is safe to assume this Google data center is not purchasing “basic local exchange telecommunications service,” from Home Telephone or any carrier. Nor does Google require subsidized service. If indeed USF support is being used for economic development purposes, those ends are completely at odds with the stated purpose of the fund, and South Carolinians are entitled to know the particulars.⁴

⁴ According to Google, it chose that location for the data center because “Berkeley County has the right combination of energy infrastructure, developable land, and available workforce for the data center.” (See <https://www.google.com/about/datacenters/inside/locations/berkeley-county/>.) Google does not state that the availability of USF subsidies to Home Telephone had anything to do with its decision. In any case, USF funding is not intended for economic development and that use of funds would be inappropriate. CTIA assumes that Home Telephone in fact has not used its USF funding for that purpose and is merely exaggerating the benefits that its funding generates.

III. CTIA SEEKS APPROPRIATE CONSIDERATION OF AN ISSUE POTENTIALLY AFFECTING ALL SOUTH CAROLINA WIRELESS SUBSCRIBERS

SCTC is quick to allege that CTIA has filed a Motion “for the purpose of delay” and to “dodge” some putative “responsibility” wireless carriers have to pay into the fund. (Response at pp. 9-10). SCTC fails to discern the irony in its claims. Over 5,235 days (14 years and 4 months) have passed since June 6, 2001, when the Commission issued Order No. 2001-419 in Docket No. 1997-239-C. At any point during the intervening 14 years SCTC could have sought to expand the contribution base of the USF. It did not do so. And now, despite the passage of almost four full Presidential terms, SCTC considers there to be some urgency to have this docket heard in the current calendar year. Whatever SCTC’s motives for conducting this docket at a breakneck pace, doing so is inadvisable.

As the Commission is aware, its hearing calendar is chock-full of merit and night hearings over the next six weeks, and something as important as subjecting 4.5 million South Carolina wireless subscribers to USF surcharge obligations should be considered carefully, not under some sort of “rocket docket.” This is especially true since SCTC has identified no exigency requiring this kind of speed, and in view of the fact that CTIA has identified numerous issues that the Commission should consider before wireless carriers become the primary contributors to the Fund.

IV. CONCLUSION

For the foregoing reasons, CTIA requests that the Petition be dismissed, or, in the alternative, that the scope of this case be expanded to include a comprehensive review of the USF. CTIA also requests that the case schedule be suspended pending resolution of CTIA's Motion.

Respectfully submitted,

ADAMS AND REESE LLP

BY: s/John J. Pringle, Jr.
John J. Pringle, Jr., Esquire
1501 Main Street, Suite 500
Columbia, SC 29201
(803) 343-1270
jack.pringle@arlaw.com
Attorneys for CTIA

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Columbia, South Carolina

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THE PUBLIC SERVICE COMMISSION OF
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Radio-Based Local Exchange Services)	CERTIFICATE OF SERVICE
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This is to certify that I have caused to be served this day, the Reply filed by CTIA-The Wireless Association®, as follows:

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

F. David Butler, Esq.
Senior Counsel
South Carolina Public Service Commission
PO Box 11649
Columbia, South Carolina 29211
david.butler@psc.sc.gov

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

M. John Bowen, Jr., Esq.
Margaret M. Fox, Esq.
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, South Carolina 29211
jbowen@mcnair.net
pfox@mcnair.net

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Andrew M. Bateman, Esq.
Jeffrey M. Nelson, Esq.
Office of Regulatory Staff
1401 Main Street, Suite 900

Columbia, SC, 29201
abateman@regstaff.sc.gov
jnelson@regstaff.sc.gov

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Charles L.A. Terreni, Esq.
Terreni Law Firm, LLC
1508 Lady Street
Columbia, SC, 29201
charles.terreni@terrenilaw.com

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Scott Elliott, Esq.
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC, 29201
selliott@elliottlaw.us

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Jeanne Stockman, Esq.
CenturyLink
14111 Capital Blvd.
Wake Forest, NC, 27587
Jeanne.w.stockman@centurylink.com

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Frank R. Ellerbe, III, Esq.
Bonnie D. Shealy, Esq.
Robinson, McFadden & Moore, P.C.
P.O. Box 944
Columbia, SC, 29202
fellerbe@robinsonlaw.com
bshealy@robinsonlaw.com

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

Burnet R. Maybank III, Esq.
Nexsen Pruet, LLC
P.O. Box 2426
Columbia, SC, 29202
BMaybank@nexsenpruet.com

VIA FIRST CLASS AND ELECTRONIC MAIL SERVICE

C. Jo Anne Wessinger Hill, Esq.
Steven W. Hamm, Esq.
Richardson, Plowden & Robinson, P.A.

P.O. Drawer 7788
Columbia, SC, 29202
jhill@richardsonplowden.com
swhamm@richardsonplowden.com

s/ Victoria H. Moody
Victoria H. Moody
Paralegal

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Columbia, South Carolina